

APPROVED MINUTES*
SUNNYVALE CITY COUNCIL
TUESDAY, AUGUST 11, 2009

(Directly following this meeting a Sunnyvale Redevelopment Agency Meeting was held).

5 P.M. SPECIAL COUNCIL MEETING (Closed Session)

Closed Session pursuant to Government Code Section 54956.9(a): Conference with legal counsel – existing litigation. Name of case: Randall Gilbert vs. City of Sunnyvale, Santa Clara County Superior Court Case No.1-03-CV-004823; Appellate Case No. H027237

5:30 P.M. SPECIAL COUNCIL MEETING (Study Session)

Board and Commission Interviews

7 P.M. COUNCIL MEETING

CALL TO ORDER

Mayor Spitaleri called the meeting to order.

SALUTE TO THE FLAG

Mayor Spitaleri led the salute to the flag.

ROLL CALL

PRESENT:

Mayor Anthony Spitaleri
Vice Mayor Christopher Moylan
Councilmember John Howe
Councilmember Ron Swegles
Councilmember Melinda Hamilton
Councilmember David Whittum
Councilmember Dean Chu

ABSENT:

None

STAFF PRESENT:

City Manager Gary Luebbers
Assistant City Manager Robert Walker
City Attorney David Kahn
Director of Community Development Hanson Hom
Director of Public Safety Don Johnson
Director of Human Resources Erwin Young
City Clerk Kathleen Franco Simmons

CLOSED SESSION REPORT FOR AUGUST 11, 2009

Vice Mayor Moylan reported Council held a closed session earlier regarding: Closed Session pursuant to Government Code Section 54956.9(a): Conference with legal counsel – existing litigation. Name of case: Randall Gilbert vs. City of Sunnyvale, Santa Clara County Superior Court Case No.1-03-CV-004823; Appellate Case No. H027237

Vice Mayor Moylan stated direction was given, but no action was taken.

PUBLIC ANNOUNCEMENTS

Councilmember Howe reported the Council's ethics sub-committee met recently and issued several decisions. The dates for the Council candidate debates were set for September 24 and October 13, with the potential for an additional debate to be added the night before the election on November 2, 2009. All debates will be held in the Council Chambers. Should negative campaigning occur prior to the election, the moderator will decide if an additional debate will be necessary. The sub-committee also reported that the ethics brochure has been completed and will be inserted in the upcoming Sunnyvale Quarterly Report.

Councilmember Howe stated Sunnyvale resident Sharon Kreider was chosen as the moderator and as moderator, she will choose the time that the debates will be held. Kreider is a neutral party, has never run for office, and has not contributed to or endorsed any current or past candidates.

The sub-committee also recommended that all council candidates sign the Code of Fair Campaign Practices. Councilmember Howe stated this is a document the state has developed to encourage fair campaign practices. The signed forms will be posted by the City along with an explanation on what the document represents, and which candidates signed the form.

Councilmembers Hamilton verified with Councilmember Howe that the debates will be re-broadcast at least 10 times, and although the time of the debates will be up to the moderator, he expects they will begin around 7 p.m.

Councilmember Whittum requested Council review the ethics brochure prior to distribution among Sunnyvale residents. Councilmember Howe explained the brochure is the same as was distributed during the last campaign, with the exception of the dates and the removal of the sentence stating that all candidates chose to sign the code. Councilmember Howe explained that not all of the candidates signed the Code of Fair Campaign Practices. Councilmember Whittum requested staff provide him with a copy of the ethics brochure.

Mayor Spitaleri thanked Councilmember Howe for the report and verified the sub-committee will be in force until end of the election and will continue to assist, only as requested by the moderator.

On behalf of the sub-committee, Councilmember Howe thanked Assistant City Manager Robert Walker for his assistance and continued support of the moderator, and her needs, as the election moves forward.

PRESENTATION

David Kobayashi gave a presentation by Santa Clara Valley Transportation Authority (VTA) on the Southbound U.S. 101 Ramp Metering Project.

Councilmember Chu stated ramp metering in San Mateo County was implemented in late 2007. Councilmember Chu verified with Mr. Kobayashi that highways 85 and 87 have already implemented ramp metering.

CONSENT CALENDAR

Councilmember Whittum pulled Items 1.G. and 1.I from the Consent Calendar.

MOTION: Vice Mayor Moylan moved and Councilmember Swegles seconded to approve the Consent Calendar with the exception of Items 1.G. and 1.I.

VOTE: 7-0

1.A. Approval of Council Meeting Minutes of July 28, 2009

1.B. Approval of Council Meeting Minutes of August 4, 2009

1.C. Approval of Information/Action Items – Council Directions to Staff

Fiscal Items

1.D. RTC 09-216 List of Claims and Bills Approved for Payment by the City Manager – List No. 465

Staff Recommendation: Review the attached lists of bills.

1.E. RTC 09-213 Investment and Cash Management Policy Update for Fiscal Year 2009/2010

Staff Recommendation: Adopt the attached Investment Policy for FY 2009/2010 as presented.

1.F. RTC 09-214 City of Sunnyvale Investment Report – 2nd Quarter 2009

Staff Recommendation: Receive and file the investment report.

1.G. RTC 09-211 Carryover of Unexpended City Funds from FY 2008/09 to FY 2009/10 for State of the City Event

Councilmember Whittum stated concerns that the State of the City event on September 26 could potentially be viewed as a campaign event and requested it be rescheduled after the election. Mayor Spitaleri stated the event date was chosen several months ago and coincides with the one-year opening of the historical museum.

Public comments opened.
No speakers.
Public comments closed.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded to approve a carryover of \$62,162 in allocated, but unexpended State of the City funds from FY 2008/09 to FY 2009/10.

Councilmember Hamilton stated she appreciates Councilmember Whittum's concern; however, the State of the City is an annual event. The City routinely carries on with City business during elections and this event is not any different.

Councilmember Howe stated he agrees with Councilmember Hamilton and added that it would be a far stretch to connect this event as any type of a campaign event. He stated campaigning is not allowed at City events and attempting to connect this event to a campaign event is not valid.

Councilmember Whittum stated he will oppose the motion for reasons already stated and because mid-November would compliment the opening of the new Target store.

VOTE: 6-1 (Councilmember Whittum dissented)

1.H. RTC 09-204 Approval to Accept Office of Economic Adjustment's Economic Development Conveyance Application Funding and Approval of Budget Modification No. 39

Staff Recommendation: Approve Budget Modification No. 3 to incorporate Onizuka AFS BRAC Economic Development Conveyance funding in the BRAC Project Budget.

Personnel

1.I. RTC 09-212 Modification of Memoranda of Understanding: Communication Officers Association and Service Employees International Union, Local 521

Councilmember Whittum stated he pulled this item in order to oppose it as he does not approve of extending employee contracts.

Councilmember Howe verified with Director of Human Resources Erwin Young that the one year savings from the elimination of salary increases this year will equal approximately 2.5 million.

Councilmember Howe verified that all the directors, including the city attorney and city manager, have also agreed to forgo pay increases for the upcoming year.

Councilmember Howe verified with City Attorney David Kahn that the City Charter provides that Council shall receive the same increases as General Law cities. Councilmember Howe verified that approval of any changes to Council's salaries would require a change to the City Charter and by a vote from the public.

Councilmember Howe asked Council to explain their plans on assisting with the budget and their plans for taking a zero year of pay. Councilmember Whittum stated he has taken a 10 percent salary reduction, by not accepting either the health benefit or the cash "in-lieu of insurance coverage" additional monies. Councilmember Whittum stated he also wanted to explain why he is not in favor of extending the employee contracts.

Councilmember Howe called for a point of order, stating that Councilmember Whittum spoke out of turn as there was not any motion on the floor. Mayor Spitaleri requested discussion be limited to what each Councilmember plans to do in order to assist with the budget this year.

Councilmember Whittum stated he would like to explain his reasoning for not agreeing with extending the union contracts. Councilmember Whittum stated that the contracts being extended were negotiated during good times and these are not good times.

Councilmember Swegles explained he does not take all the benefits offered to him and he will return his raise in January 2010.

Councilmember Chu stated he took a 60 percent pay cut to join Council in 2003. Councilmember Chu stated he has agreed to voluntarily take an additional 10 percent pay cut for his remaining time on Council.

Vice Mayor Moylan stated he has gone on public record as agreeing to take a zero year of pay.

Mayor Spitaleri stated since his time on Council, he has not received any medical or retirement benefits and will make his contribution back to the City in the same manner as his fellow Councilmembers.

Public comments opened.

No speakers.

Public comments closed.

MOTION: Councilmember Hamilton moved and Councilmember Howe seconded approval of Alternative 1: Adopt the modification/supplement to the Memoranda of Understanding with the Communication Officers Association and Service Employees International Union, Local 521.

Councilmember Howe highlighted the savings the City will receive deferring salaries for employees and Council as part of the new fiscal year. This action being offered on behalf of the City's employees and Councilmembers will save the City 23.8 million over the next 20 year planning period.

VOTE: 6-1 (Councilmember Whittum dissented)

1.J. RTC 09-215 Contract Renewals for Dental and Vision Insurance for Calendar Year 2010, Amended to Include Employee Paid Voluntary Buy-Up Options

Staff Recommendation: Alternative 1: Authorize the Director of Human Resources to enter into a contract with Delta Dental for the period of January 1, 2010 through December 31, 2010, and authorize the Director of Human Resources to enter into a contract with Vision Service Plan for the period of January 1, 2010 through December 31, 2010.

Contracts: Sunnyvale Works!

1.K. RTC 09-218 Rejection of Sunnyvale Works! Bids for Interior Lining and Structural Repairs of Water Tanks at the Central and Hamilton Plants (F0806-85)

Staff Recommendation: Reject all bids received in response to the Invitation for Bids F0806-85 for Interior Lining and Structural Repairs of Water Tanks at the Central and Hamilton Plants.

Other Items

1.L. RTC 09-210 Ratification of Council Intergovernmental Committee Appointment to Bay Area Council Economic Institute

Staff Recommendation: Alternative 1; Council ratifies the appointment of Councilmember Hamilton to the Bay Area Council Economic Institute.

STAFF RESPONSES TO PRIOR PUBLIC COMMENTS

None.

PUBLIC COMMENTS

None.

PUBLIC HEARINGS/GENERAL BUSINESS

2. RTC 09-207 A Resolution Adopting a Negative Declaration and Amending the General Plan by Revising the Housing and Community Revitalization Sub-Element (continued from the July 14, 2009 Meeting)

Director of Community Development Hanson Hom presented the staff report.

Councilmember Swegles inquired if the affordable housing, below market rate (BMR) will come back to Council in September. Director Hom stated staff originally scheduled some minor program modifications that were really technical corrections to the BMR ordinance. However, if Council would like staff to consider more substantive ordinance amendments, then it would be best to package it all together and then bring it back to the Council at a later date in order to allow staff the time to develop those options. Councilmember Swegles verified with Director Hom that if Council were to ask staff to consider more substantive amendments to the ordinance, staff would return to Council early next year, depending on the scope of revisions Council would like staff to incorporate.

Councilmember Swegles verified with Director Hom that if Council approved the staff recommendation, it would include BMR. Director Hom explained one of the recommendations is to study increasing the flexibility of the BMR ordinance considering some new revisions, but it does not specify the revisions. Early on in the process, staff would need to have discussions with Council and the Planning Commission in order to identify the scope of possible amendments.

Councilmember Swegles verified with Director Hom that Council can clarify what they would like to see included in the staff report at the time a motion is made.

Councilmember Swegles verified with Director Hom that one of the housing element recommendations is to look at the parking standards for transit-orientated developments. Many cities have different parking standards for transit orientated developments to promote reduction of parking by encouraging ride share and alternative transportation. The recommendation also reviews parking standards for special needs housing such as senior housing and affordable housing units, where car ownership is generally lower than for market rate units. These items are topics of discussion that staff would bring before Council for consideration.

Director Hom explained the housing element contains a number of recommendations and even if the recommendations are adopted by Council, all the recommendations would not necessarily need to be adopted in order for the housing element to be compliant. The state will review the element as to the how the City has met the overall housing goals. Director Hom explained that very few cities meet all their goals; however, the state would like to see cities achieve as many goals as possible.

Councilmember Swegles verified with Director Hom that overflow street parking is not counted toward meeting the on-street parking requirements per development.

Councilmember Hamilton verified with Director Hom that the state requires the City to report on an interim basis as to how the City is meeting its goals. The City has an implementation plan and one of the state's requirements is that the City provide timelines for the goals they are seeking to implement. The state's formal review will not occur until the next housing element cycle.

Councilmember Hamilton inquired about the state's requirement to meet the regional housing needs (RHNA) numbers for increasing housing as the City is almost built out and is opposed to rezoning areas for denser developments. She inquired as to how the City will continue to receive the state's grant money if they are unable to comply with the requirements in the future. Director Hom responded that the City is fortunate to have land with sufficient housing units to meet the housing requirements, even with the increased RHNA numbers. Through zoning districts and a number of different sites, the City does not need to rezone any land or increase densities in order to meet the RHNA numbers versus other cities where RHNA numbers are a major concern. Director Hom stated additionally, the housing element law does not require cities to show evidence of production of the increased housing units, rather the state requires cities to plan for and have adequate land zoned to meet the RHNA numbers. The state considers that market conditions, such as the current economic situation, may impact a cities ability to meet the RHNA numbers by 2014.

Councilmember Hamilton stated she is looking at the future and questioned if the City will reach a point where they are not able to meet the RHNA numbers due to running out of land and space for housing. Director Hom explained that the staff report identified approximately 42 acres that are underutilized; however, meeting the housing needs in the future may be a struggle as the state has projected 10 million new residents over the next 10 years. The state will spread out the projection and cities which are built-out will receive a higher number as a challenge to find land and/or increase densities in order to accommodate their *fair share* allocation. Additionally, cities which are built-out, are being challenged to find sites along transit corridors to accommodate housing, which brings up a lot of difficult issues, especially in established neighborhoods.

Councilmember Hamilton verified with Director Hom that a process exists which allows local jurisdictions to challenge the state on their RHNA numbers. A compromise is usually reached between the state and the cities.

Vice Mayor Moylan verified with Director Hom that the City has indirect control on the allocation of housing to the extent to which the City permits job creating projects. One of the items contained in the formula is how much free land the City has and how many jobs has the City created. Increased jobs will require additional housing allocations for the City from the state.

Vice Mayor Moylan inquired as to the state's elimination of the Use Permit in exchange for the administrative process. Vice Mayor Moylan verified with Director Hom that a Use Permit will not be required in order to place multi-family housing in area already zoned for multi-family housing.

Vice Mayor Moylan stated the way that administrative approval is defined is an important aspect and verified that will return to Council at a later date. Vice Mayor Moylan stated he would prefer the report state that there should not be "*any deviations*" to development standards, rather than "...*no variances to development standards*." If a project is relegated to administrative review, Vice Mayor Moylan stated he would like to see any deviations require the next higher review. Director Hom provided information regarding the administrative process and the state's relatively minimal requirements for the City of Sunnyvale.

Councilmember Whittum verified with Director Hom that R2 zoning (Multi-family) is currently allowed with a Use Permit and whether that requirement might change. Director Hom confirmed a consideration would be to allow a certain number of multi-family units by right in that zoning district, to lower the threshold for the number of units required to be considered as R2 (Multi family with a Use permit) zoning. Councilmember Whittum stated if staff would prefer that R2 zoning require a use permit, then he would not need to revise anything and Director Hom responded he did not believe there would need to be any changes because the recommendation is not that specific.

Councilmember Whittum expressed concerns with the policy wording such as changing a word and unbundling the parking requirements. Councilmember Whittum inquired about designating additional land for mobile homes. Director Hom stated there might be a reason the areas were not zoned for mobile home parks, but that is an issue Council may consider in the future.

Councilmember Hamilton stated additional park areas are not mentioned, which would be necessary with increased development, and questioned if the reason was due to the Parks of the Future study. Director Hom explained that developers will need to either provide the required allocation of park lands or pay an "in lieu fee" as per the Park Dedication and In Lieu Fee ordinances.

Councilmember Chu stated the City has achieved 92 percent of the housing goals over the past five years and inquired how that percentage compares to neighboring cities. Director Hom stated he is not exactly sure; however, many cities have exceeded their numbers and it is the built-out cities that struggle the most. Director Hom explained that cities with nearby transit saw their housing allocations increase regardless whether they had the necessary land available or not.

Public hearing opened at 8:09 PM.

Jessica Garcia-Kohl, Associate Director of the Housing Trust of Santa Clara County, stated their direction is focused on affordable housing. Kohl thanked Council and the housing staff for their leadership and explained that the City of Sunnyvale is the first city to have a draft housing element approved by the state. Kohl explained that state and federal funding is tied to whether a City has a housing element approved and in place.

Councilmember Swegles verified with Kohl that the City is working with the Housing Trust to increase the supply of affordable housing and to assist first time homebuyers.

Councilmember Swegles verified with Kohl that the Housing Trust is also looking at foreclosed properties for the BMR program and has applied for a grant from Housing and Urban Development (HUD). Kohl stated the Housing Trust focused their efforts in San Jose because of the dramatic impact of foreclosures in that area.

Public hearing closed at 8:12 PM.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded the motion to approve Alternative 1: Adopt a resolution of the City Council of the City of Sunnyvale adopting a Negative Declaration and amending the General Plan by revising the Housing and Community Revitalization Sub-Element

with the following revisions:

staff to bring back options for possible amendments to the Below Market Rate (BMR) program in support of the Housing and Community Revitalization sub-element plan.

Councilmember Howe explained that many ideas should come back from staff so that Council may select a number of them. Foreclosed homes and other various in-lieu fees should be included. Councilmember Howe stated staff has a considerable amount of flexibility to introduce ideas that will support the goals of the housing element.

Councilmember Whittum offered an amendment to some wording. Councilmember Whittum requested the word "*reduce*" in Policy C3, page 95, to be corrected to "*reduced or modified*" standards. Councilmember Howe accepted the friendly amendment. Councilmember Swegles seconded the amendment.

Councilmember Howe stated he will consider the amendment as a friendly amendment; however, he is assuming that Councilmember Whittum plans on voting on the main motion if his amendments are adopted. Councilmember Whittum stated he is in favor of the motion presently, but can't commit until he hears from his fellow Councilmembers.

Mayor Spitaleri requested Council identify if they are making a friendly amendment, which does not require a second, or a formal amendment which does require a second.

Councilmember Whittum offered an amendment to the wording on page 96, Policy D6, from "*fit for residential uses*" to "*consistent with General Plan standards for residential uses*".

Councilmember Howe stated Council would not do anything against the General Plan. He accepted Councilmember Whittum's friendly amendment.

Councilmember Whittum requested Councilmember Howe consider another change. Policy 3B exists in the current housing element and Councilmember Whittum would like that policy added to the revised housing element under Policy F7. Councilmember Hamilton inquired if Councilmember Whittum was making a formal amendment or a friendly amendment and Councilmember Whittum replied that it was a formal amendment.

FORMAL AMENDMENT: Councilmember Whittum moved and Councilmember Hamilton seconded to add Policy 3B, which exists in the current housing element, to the revised housing element under Policy F7.

Vice Mayor Moylan inquired why Policy 3B was left out and Director Hom stated it was not left out intentionally. He stated there appears to be a good mix of appropriate zoning and adding the policy is a little redundant but he has no objections to adding it back in.

VOTE on FORMAL AMENDMENT: 7-0

Restated MAIN MOTION:

MOTION: Councilmember Howe moved and Councilmember Swegles seconded the motion to approve Alternative 1: Adopt a resolution of the City Council of the City of Sunnyvale adopting a Negative Declaration and amending the General Plan by revising the Housing and Community Revitalization Sub-Element

with the following revisions:

- 1, Staff to bring back options for possible amendments to the Below Market Rate (BMR) program in support of the Housing and Community Revitalization sub-element plan.
2. Modify Policy C.3 as follows: "Establish **reduced and modified** parking standards for special needs housing and housing in close proximity to public transit."
3. Modify Policy D.6 as follows: "Provide expanded areas for higher density housing through the conversion of underutilized industrial areas to residential use, if the sites are **consistent with General Plan standards for residential uses.**"

4. Add to Policy F.7 as follows: ***"Continue to permit and encourage a mix of residential and job-producing land uses, as long as there is neighborhood compatibility and no unavoidable environmental impacts."*** (same as Policy 3B in current Housing element).

VOTE: 7-0

3. RTC 09-158 Automatic Gas Shut-Off Appliances in New or Significant Building Construction (Study Issue)

Director of Public Safety Don Johnson provided the staff report.

Councilmember Swegles stated an issue with these shut off devices is that walking by one will cause enough of a vibration that will activate the unit to shut off. Councilmember Swegles inquired if these devices have been improved and Director Johnson stated he is not aware of any changes to these devices.

Vice Mayor Moylan verified with Director Johnson that residents should not go out and shut off their own gas during an emergency.

Public hearing opened at 8:25 PM.

Arthur Schwartz stated his earthquake shut off valve has never shut off accidentally and works very efficiently. Schwartz questioned the study and the earthquakes that were listed as they are not comparable to the force of an earthquake such as the 1906 earthquake, which affected Sunnyvale quite a bit. Schwartz requested this item be restudied before Council votes.

Public hearing closed at 8:29 PM.

MOTION: Councilmember Howe moved and Councilmember Swegles seconded the motion to approve Alternative 1: Do not require the installation of Automatic Gas Shutoff Devices.

Councilmember Howe thanked Councilmembers for ranking this item high enough to study. Councilmember Howe stated staff performed a good study.

VOTE: 7-0

4. RTC 09-219 Follow-up to Council Study Issue (RTC 09-090): Enforceability of CC&Rs for Violations to City Code and Project Approvals

Director of Community Development Hanson Hom provided the staff report.

Public hearing opened at 8:31 PM.

No speakers.

Public hearing closed at 8:31 PM.

Councilmember Howe stated a motion is not required on this item but he wanted to thank staff for their work on this study issue. Councilmember Howe stated this item should be monitored along with any complaints and a report should come back to Council in a few years. Director Hom stated a website has been established for this issue and is available at hoas.insunnyvale.com.

COUNCILMEMBER REPORTS ON ACTIVITIES FROM INTERGOVERNMENTAL COMMITTEE ASSIGNMENTS

Councilmember Hamilton announced that she and Councilmember Chu attended an ethics luncheon, which was held by Santa Clara University. Councilmember Hamilton stated the next luncheon will be held in mid-October and she encouraged her colleagues to attend.

Councilmember Howe stated he attended a meeting with Councilmember Swegles and staff regarding the base realignment (BRAC) process. Councilmember Howe stated it was a very successful meeting.

NON-AGENDA ITEMS & COMMENTS

COUNCIL: Mayor Spitaleri thanked staff, the volunteers, and homeowners for a very successful "National Night Out" event.

STAFF: City Manager Gary Luebbers stated the Target store is on schedule and the general opening is schedule for November 15, 2009. The opening festivities will be held on November 10, 2009.

INFORMATION ONLY REPORTS/ITEMS

- Tentative Council Meeting Agenda Calendar
- Draft Minutes of Parks and Recreation Commission Meeting of July 8, 2009
- Draft Minutes of Arts Commission Meeting of July 15, 2009
- Draft Minutes of the Bicycle and Pedestrian Advisory Commission Meeting of July 16, 2009
- RTC 09-217 Opportunity for Council to Appeal Decisions of the Planning Commission of July 27, 2009 and the Administrative Hearing of July 29, 2009
- Draft Minutes of the Board of Library Trustees Meeting of August 3, 2009

ADJOURNMENT

Mayor Spitaleri adjourned the Council Meeting to the Sunnyvale Redevelopment Agency Meeting at 8:37 p.m.

Kathleen Franco Simmons
City Clerk

Date